PUBLIC PROSECUTOR

v.

KOAY POH SENG

HIGH COURT, SINGAPORE
LP THEAN J
CHAO HICK TIN JC
[CRIMINAL CASE NO. 8 OF 1987]
3 MAY 1988

CRIMINAL PROCEDURE: *Trafficking in a controlled drug - Accused arrested in a taxi after coming out of a hotel with a bag - Bag found in taxi containing drugs - Whether defence of duress sustainable.*

The accused was charged for trafficking in 150.04 gms of diamorphine a controlled drug which was an offence under s. 3(a), Misuse of Drugs Act 1973 and punishable under s. 29(1) of the said Act. The police acting on information observed the accused coming out of a hotel and entering a taxi with a bag. The police stopped the taxi and arrested the accused. The said drug was found in the bag which the accused was carrying. The defence was one of duress whereby the accused stated that he was assaulted and abducted from Johore Baru and taken into Singapore illegally in a boat and he was told that he would be killed if he did not carry the said bag from the hotel to a theatre. The accused had been examined by a doctor but he did not inform the doctor that he had been assaulted.

Held:

[1] The defence of duress was not sustainable as the accused did not show that he had made attempts to escape from his abductors. Further, the medical report did not show that he had suffered fresh injuries.

[Accused convicted and sentenced.]

Legislation referred to:

Misuse of Drugs Act 1973 [Sing], s. 29(1)

For the public prosecutor - Gerardine Pang
For the accused - Edwin De Souza

JUDGMENT

LP Thean J:

The accused, one Koay Poh Seng, stands charged before us on the following charge:

> That you, Koay Poh Seng, on or about 3 May 1986 at between 10.40 pm and 10.45 pm in Singapore, trafficked in a Class A controlled drug specified in Part 1 of the First Schedule to the Misuse of Drugs Act, 1973, to wit, by transporting eighty (80) plastic packets containing not less than 150.04 grams of diamorphine from Geylang Road to the junction of Kallang Road, Lavender Street and Crawford Street in motor taxi SHA 2252B, without any authorisation under the said Act or the regulations made thereunder, and you have thereby committed an offence under s. 3(a) of the Misuse of Drugs Act, 1973, and punishable under s. 29(1) of the said Act.

The evidence led by the prosecution shows that on 3 May 1986 at about 11.00 am the accused accompanied by a dark skinny Chinese man alighted from a taxi in front of the Ghim Peng Hotel which is located along Geylang Road between Lorong 22 and Lorong 24. They

walked to the reception desk. The accused was holding a bag. The dark skinny man asked one of the receptionist (Ang Bee Hoon) at the counter whether there was a room for his friend, i.e., the accused. She answered in the affirmative. The accused, who was bigger in size than his friend, gave his identity card for registration in the Lodging House register book. At the reception area, the accused and the dark skinny man were seen to have chatted. The dark skinny man paid $46 for the rent for the day. The behaviour of both persons were observed to be normal.

After registration, the accused and his friend were shown by a chambermaid (Goh Geok Wah) to room 30. On reaching the room, the dark skinny man ordered one iced coffee and one tea. When the drinks were served, a cash sale bill No. 8902 for RM1.60 was presented (Exhibit P25) and the dark skinny Chinese man gave the chambermaid $2 and told her to keep the change.

On the same day at about 10.00 pm and on information received, a team of eight officers from the Central Narcotics Bureau (CNB), led by Senior Narcotics Officer (SNO) S Vijakumar, were deployed in various positions to keep watch over Ghim Peng Hotel. Vijakumar and Narcotics Officer, William Potter had positioned themselves across the road at the Parawan Bar, a distance of about 20 meters from the Hotel entrance (see Exhibit P26 for location). Later, at about 10.35 pm, the accused was seen coming out of Ghim Peng Hotel with a yellow bag (Exhibit P16) in his hand. He turned left and walked a few metres. He then stopped and hailed a passing taxi which was blue in colour. Vijakumar, who was a pillion rider on motorcycle F 6956X ridden by an Assistant Narcotics Officer, Soh Geok Chuan, trailed the taxi. So did his other officers. The taxi was ascertained to bear registration number SHA 2252B.

At the junction of Kallang Road/Lavender St/Crawford Street, the traffic light was red. Vijakumar signalled to his men, through the walkie-talkie, to move in to arrest the accused. He instructed Soh Geok Chuan, his rider, to stop the motor-cycle ahead of the taxi. Vijakumar alighted from the motor-cycle and rushed back towards the taxi, opened the front passenger door, identified himself as a government man and arrested and handcuffed the accused. The yellow bag which the accused was seen carrying earlier was on the floor of the front seat. Vijakumar seized the bag. Soon, Assistant Narcotics Officers, Lim Pauy Boon and Muryati came to the taxi to assist. Lim Pauy Boon brought the accused to the back of the taxi and in the presence of the accused, Vijakumar unzipped the bag and took out some clothings. Then he took out a plastic bag and there were in it two packages wrapped with newspaper. Vijakumar unwrapped one of them and in it were many small packets containing granular substance. Vijakumar did not count the number of packets. He then placed everything into the bag and zipped it up.

The accused was brought to the CNB Headquarters arriving there at about 11.00 pm. Twenty minutes later, Vijakumar and six of his officers left CNB Headquarters to raid Room 29 of Ghim Peng Hotel. One person was arrested in the room and another was arrested outside the Hotel building after a short chase. The two arrested persons were brought back to CNB Headquarters.

Out of the yellow bag that was seized the following items were found therein:

(i) some clothings;

(ii) one plastic bag (with the blue squares): in this bag there were two newspaper wrapped packages and in each package were 15 smaller packets containing granular substance;

(iii) another plastic bag: in this bag there were two brownpaper wrapped packages and in each package were 25 smaller packets containing granular substance.

These are shown in Exhibits P4 and P5.

All the packets were sent to the Department of Scientific Services for analysis. The principal scientific officer has certified that the 80 packets contain no less than 150.04 grams of diamorphine, a class A controlled drug listed in the First Schedule to the Misuse of Drugs Act.

At the close of the prosecution's case, Counsel for the defence elected not to make any submission. We found that a *prima facie* case had been made out against the accused on which, if unrebutted, would warrant his conviction on the charge. We, therefore, called upon the accused to enter his defence.

The accused elected to give evidence. His defence was one of duress. He alleged that he was forced by others through threats to his life, into carrying the bag from Ghim Peng Hotel to the junction of Kallag Road/Lavender Street/Crawford Street where he was arrested. This was also his defence in his s. 121(6) statement. Briefly, the accused said that he wanted to come back to Singapore to work, having worked here before from 1982-1985. On 2 May 1986, at about 11.00 am, he arrived at the Johore Bahru bus terminal having travelled down from Penang. On disembarkation from the bus and while queuing-up to fill up the immigration card, he was assaulted by five to six persons and was forcibly carried into a vehicle. His face was covered with a paper-bag and he could not see who his assailants were. He became unconscious after the assault. After about half an hour journey, he was brought to an attap-hut by the seaside where he was kept until the next day. Then two persons escorted him to a motor-boat and he was taken across the sea to Singapore. At Singapore, they walked to the main road and hailed a taxi which took them to Ghim Peng Hotel. They arrived at the hotel at about 10.00 to 11.00 am. According to him one of the two persons took his identity card for registration. They paid for the hotel charges. He said they told him they wanted him to carry some clothings and medical powder from one place to another and if he refused he would be killed.

After checking into room 30, they tied the hands, legs and mouth of the accused and the accused remained so tied until 7.00 pm. It was not clear whether the two persons returned by then though it must be so, otherwise how could the accused be untied. In any event, at 9.00 pm, the two came back and asked the accused to carry a yellow bag which he was told continued clothings and gastric powder. At about 10.00 pm, the accused and one of the two men went down and walked out of the hotel. That person hailed a taxi and the accused was asked to sit on the front passenger seat. He did not pay attention to the bag and could not recall who placed the bag in the taxi or where was it placed. The accused was told to go to the Golden Mile Theatre and that someone would follow him and wait for him there. The accused said he was in fear for his life.

During cross-examination, the accused said that the people who assaulted him at the bus terminal at Johore Bahru came from behind. Even though there were many people at the bus terminal, nobody came to help him. On the journey to the attap-hut, his head was covered with a paper bag. While he was kept at the attap-hut, they tied his hands behind his back with plastic covered wires and his legs were also tied. When the accused was so tied, they removed the paper-bag covering the accused head and instead the people who brought him there covered their faces with cloth. Later, on reaching Singapore the accused saw the faces of the two who escorted him. But he cannot recognise them. In any case, they were both bigger than the accused.

The accused said they assaulted him because he refused to carry the clothings and medical powder across to Singapore. But this does not explain why they set on him totally unprovoked when he first arrived at the bus terminal and was queuing-up.

The accused said in cross-examination that the three of them arrived in a taxi at the hotel. This is contrary to the evidence of Ang Bee Hoon who stated that only two persons alighted from the taxi, the accused and a dark skinny Chinese man. Indeed, in answer to a specific question whether one or two persons accompanied him into the hotel he said he could not recollect. The accused seemed to say that the second man, after alighting from the taxi somehow disappeared and only he and one other person went into the hotel. The accused and that person carried nothing with them. However, Ang Bee Hoon stated that the accused was carrying a bag and the dark skinny man was smaller than the accused. The accused said that at the counter, the dark skinny man did not speak to him. This is again contradicted by Ang Bee Hoon.

Turning to the events at 10.35 pm that evening when he left the hotel, the accused's evidence is contradicted by those of the taxi driver (PW7), Vijakumar (PW8) and William Potter (PW4), who all said that he came out to the hotel alone carrying a bag. He hailed the taxi. The taxi-driver gave evidence that the accused directed him to go to Golden Mile. The accused's answers to several questions were vague. In many instances he just said "cannot remember". The taxi driver was very firm that the accused was the one he carried, that the accused hailed his taxi, that no one was with him and that the accused directed him to go to Golden Mile. While the taxidriver might have carried many passengers that day, the happening that evening must have been very special. Thus, it seems quite natural to this Court why he could recognise the accused. We accept the evidence of the taxi-driver.

Defence Counsel also attempted to show that Vijakumar (PW8) and Potter (PW4) could have been mistaken by what they saw in view of the poor lighting outside the hotel. The street lamp as depicted in Exhibit P10 is not right in front of the entrance of the hotel but a little distance away. But both witnesses insisted that it was bright enough for them to see and Potter stated that there were lights from the hotel itself. Their view was also not blocked by passing traffic which was light. We would observe that P10 was taken at 3.50 am on 4 May 1986. In any event, their evidence was corroborated by the taxi-driver (PW7).

It is also of interest to note that though the accused claimed to have been rather badly assaulted on 2 May 1986 at Johore Bahru, so much so that he became unconscious, yet when he was examined by the doctor at Singapore General Hospital, he did not complain of the assault. He only told the doctor of an accident that happened to him three weeks ago at Penang in which he injured his right wrist. There were a few old injuries on the accused. The doctor specifically noted (Exhibit P12) that "there were no new injuries". The accused tried to explain the omission by saying that the Government Officer told him not to raise this assault with the doctor. We disbelieve the accused. Even if he did not raise it with the doctor, if there was any fresh injury, the doctor would have noticed it as his duty was to look for injuries.

We have very carefully considered the defence put up by the accused. In many material particulars his answers seem to be an easy excuse "cannot remember". He was certainly very vague on details. If what he alleged was true, this must have been the most traumatic experience of his life which he could not have so easily forgotten. On his evidence, the accused was left alone for a few hours in the hotel room yet he made no effort to try to escape or draw the attention of the people in the hotel of his predicament, even assuming that he was in fact tied up as claimed. The receptionist and the taxi driver have both said that the accused appeared normal.

Counsel for the accused sought to reinforce the defence of duress by referring to the fact that the accused did not enter Singapore through proper channels. He said this supports the accused's allegation that he was abducted and forced to enter into Singapore illegally. We are of the view that this fact is neutral. A drug-trafficker may very well choose to enter Singapore illegally so as to avoid detection.

We find the defence put up by the accused a tall story and defies credibility. We have no hesitation in rejecting his defence as a total fabrication.

There is just one other fact which we would like to refer to. At about 1.20 am on 4 May 1986, two urine samples were taken from the accused. The samples were analysed by the scientific officer to contain morphine (Exhibit P28). This shows that the accused had consumed drug. No defence was raised that the 80 packets the accused was carrying was for his own consumption. However, even if it were raised, we would think that it was too large a quantity for his own consumption and having regard to all the relevant circumstances, such a defence would have been plainly unsustainable.

Having considered all the evidence placed before us, we are satisfied beyond any reasonable doubt that the charge against the accused has been proved and we therefore find the accused guilty of the same.

Also found at [1988] 2 CLJ 158